

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON**

**HANNAH AHERN,**

Plaintiff,

v.

**ERIK KRAMMERER, et al.,**

Defendants.

Case No. 3:21-cv-561-YY

**ORDER**

**Michael H. Simon, District Judge.**

United States Magistrate Judge Youlee Yim You issued Findings and Recommendation in this case on April 26, 2022. ECF 28. Judge You recommended that this Court deny Defendant Erik Krammerer and Defendant City of Portland's Motions to Dismiss. ECF 16, 17.

Under the Federal Magistrates Act (Act), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party objects to a magistrate judge's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate judge's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474

U.S. 140, 152 (1985) (“There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate’s report to which no objections are filed.”); *United States. v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review *de novo* magistrate judge’s findings and recommendations if objection is made, “but not otherwise”). Although in the absence of objections no review is required, the Act “does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard.” *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that “[w]hen no timely objection is filed,” the Court review the magistrate judge’s recommendations for “clear error on the face of the record.”

Defendants Krammerer and the City of Portland timely filed objections, to which Plaintiff Hannah Ahern (Ahern) responded. Defendants object to the portion of Judge You’s recommendation finding that spit is not a “polluting substance” within the meaning of Oregon Revised Statutes (ORS) § 164.785(2) and that Ahern had, therefore, adequately alleged that there was no probable cause for her arrest. The Court has reviewed *de novo* those portions of Judge You’s Findings and Recommendation to which Defendants object, and Ahern’s response. The Court does not find Defendants’ objections compelling. Judge You did not find that spit or the act of spitting is not generally “offensive” in all contexts but instead found that spitting on a street did not fall within the specific and narrow statutory prohibition of ORS § 164.785(2). Nor did Judge You limit her discussion of offensive or polluting substances to only carcasses and excrement. She discussed all of the substances listed in ORS § 164.785(1) to determine whether spit was in the *class* of substances encompassed by the statute. The Court agrees with Judge You that the Oregon Legislature did not intend for spit to be included in the class of substances encompassed by ORS § 164.785.

The Court **ADOPTS** Judge You's Findings and Recommendation. ECF 28. The Court **DENIES** Defendants' Motions to Dismiss. ECF 16, 17.

**IT IS SO ORDERED.**

DATED this 28th day of July, 2022.

/s/ Michael H. Simon  
Michael H. Simon  
United States District Judge